

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 479 of 1999

WITH

CRIMINAL REVISION APPLICATION NO.480 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NIZAM MOHMAD BUDDHA

Versus

STATE OF GUJARAT

Appearance:

MR UM SHASTRI for Petitioner

MR BY MANKAD, APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 12/10/1999

ORAL COMMON JUDGEMENT

Rule in each Cri.Rev. Application. Ld. APP Mr.
Mankad appears and waives service of Rule for Respondent
State. With the consent of the learned counsel appearing
for the parties, the matter is taken up for final hearing
today

Heard learned counsel Mr. Patel, for learned
counsel Mr. Shahtri appearing for the Petitioner and ld.

APP Mr. Mankad, for the State in both the Cri.Rev. Applications. It is submitted that Truck bearing registration No. GJ-17-X-2548 was seized for the offences punishable under section 379 of the I.P.Code etc. in connection with II.CR No.148/99 of Dabhoda Police Station, District : Gandhinagar as well as in connection with II.CR.No. 120/99 of Dabhoda Police Station. It is stated that when said truck was intercepted, railway steel slippers worth Rs. 3000/ were found. The case of the prosecution is that the driver-cum-owner of the truck had run away from the spot and he could not be arrested. The owner of the truck is also involved in theft cases committed against the railway properties. It is also the case of the prosecution that the very truck was involved in the case of theft of properties of railway worth Rs.96000/ and crime was registered as II.CR No. 120/99 with Dabhoda Police Station.

It has been submitted by learned Counsel Mr. Patel, for the petitioner that nothing is recovered by way of muddamal during the course of investigation of II.CR No.120/99 allegedly transported in the truck in question.

The petitioner submitted two separate applications concerning two different CR.Numbers viz. II CR No. 148/99 and 120/99 registered with Dabhoda Police Station for getting back muddamal truck before the learned Judicial Magistrate First Class, Gandhinagar. However, the learned Magistrate, looking to the nature of offence and likelihood of confiscation of vehicle as the same is involved in committing theft of railway properties, rejected the application vide two separate orders dated 12.8.1999. It was also the say of the learned Magistrate that there is ample scope that the accused may use the very truck in similar type of offence if truck is handed over to him. Against the order dated 12.8.1999 passed by the learned Magistrate dismissing the application for release of muddamal truck in connection with II CR.No.148/99, the petitioner preferred Cri. Revision Application No. 479/99. Similarly, against the order dated 12.8.1999 passed by the learned Magistrate dismissing the application for release of muddamal truck in connection with II.CR No. 120/99, the petitioner preferred Cri. Revision Application No. 480/99. Since the common issue is involved in both the matters and arguments advanced are identical, both these Cri. Revision Application are heard together and disposed of by this common judgment.

It has been submitted by learned counsel Mr. Patel that the petitioner has purchased the aforesaid muddamal truck by obtaining loan from the Bank and

vehicle is under hypothecation. Vehicle is lying idle and stationary in the police station in an open place. This would affect adversely to the condition of the vehicle as well as the price of the vehicle and it is very likely that the vehicle may sustain damage because tyres and tubes of a stationary vehicle normally are affected adversely and would require replacement which would be very costly. Many parts of stationary vehicle will be rusted because of dust and wheather. Further, vehicle lying unproductive, would affect entire financial position of the petitioner. He further submitted that he is ready and willing to abide by whatever conditions that may be imposed by this Court while releasing the truck in question including furnishing personal bond of substantial amount and surety of the like amount.

I have gone through the impugned orders passed by the learned Magistrate dismissing the applications. The learned Magistrate has not taken into consideration important aspects as submitted by learned counsel Mr. Patel before this Court. It is also important to note that in connection with II.CR.No. 120/99 wherein it is alleged that theft of railway properties worth Rs.96,000/ is committed, nothing was recovered or found during investigation. In connection with II.CR.No. 148/98, it is alleged that theft of the property worth Rs.3000/ is committed. For such a small amount, the truck worth Rs. 1.5 lakh should not be kept idle and unproductive affecting the entire financial position of the petitioner and affecting adversely to the petitioner and his family more particularly when the petitioner has taken loan and is required to make payment of instalment towards said loan taken for the truck in question. Ld. APP Mr. Mankad has submitted that by imposing stringent conditions, muddamal truck in question can be released and handed over to the petitioner.

For the reasons aforesaid, both the Cri. Revision Applications are allowed. The impugned order dated 12.8.1998 passed by the learned 3rd Jt. Civil Judge (J.D.) Gandhinagar dismissing applications filed by the petitioners for getting muddamal truck in question in connection with II.CR Nos. 148/99 and 120/99 respectively of Dabhoda Police Station, are hereby quashed and set aside. Truck No. GJ-17-X-2548 is ordered to be handed over to the petitioner on the following terms and conditions:-

- (1) That the petitioner accused shall furnish a security worth Rs. 1.5 lakh (Rs. One Lakh Fifty Thousand only) and Personal Bond of the like amount before the trial Court.

- (2) That the petitioner accused shall not sell, transfer, assign or in any manner part with the possession of the motor truck in question pending hearing and disposal of the criminal proceedings without the permission of the competent court.
- (3) That the petitioner shall not make substantial change in the outward appearance of the motor truck including change in colour.
- (4) Accused shall regularly make payment of insurance premium of the motor truck in question.
- (5) The accused shall maintain regular register of the movement of the motor truck like the Log Book and if the same is given on hire to a third party, details thereof should be noted in the said register.
- (6) That the petitioner shall not use motor truck in question in the same or similar type of offences or in any other illegal activities.
- (7) That the petitioner shall produce truck as and when called upon by the Court.
- (8) In the event of seizure of the motor truck in question by the Bank for non-payment of dues, petitioner accused shall inform the Court immediately on such seizure taking place, preferably within 72 hours.
- (9) The petitioner shall incorporate above conditions in the Personal Bond.

On furnishing security and personal bond as aforesaid, custody of the truck shall be handed over to the petitioner.

Both these Cri. Revision Application are allowed. Rule made absolute in each application to the above extent. Copy of this order be placed in Cri. Rev. Application No. 480/99.

12.10.1999 [C.K. BUCH, J]

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